

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

Pursuant to the Public Notice released August 21, 2001, AT&T Wireless Services, Inc. (“AWS”) hereby submits its comments in the above-captioned proceeding.^{1/}

INTRODUCTION

In the Notice, the Federal-State Joint Board (“Joint Board”) seeks comment on what services, if any, should be added to or removed from the list of core services eligible for federal universal service support and how those core services should be defined.^{2/} In particular, the Joint Board invites comment on whether support for a network component of Internet access beyond the existing definition of voice grade access is warranted at this time and whether any advanced or high-speed services should be included within the list of core services.^{3/}

^{1/} See Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service, CC Docket 96-45 (rel. August 21, 2001) (“Notice”).

^{2/} Id. at 2.

^{3/} Id. at 3. AWS recognizes that there are distinctions between a network transmission component of Internet access and advanced and high-speed services in terms of the speed and direction for each. Nevertheless, in terms of determining whether the definition of universal service should be changed to include these services or transmission components beyond voice grade access, the analysis is the same. Therefore, for purposes of these comments, these services and components shall be referred to as either “advanced services” or “high-speed services.”

While wider deployment of advanced services in the future, including the third generation (“3G”) services AWS hopes to be able to roll out ubiquitously over the next few years, may warrant revisiting the list of services eligible for federal universal service support, expanding the list at this juncture would be premature. The vast majority of residential customers do not subscribe to advanced services today, and probably will not for some time to come. If the Commission were to require providers to offer such services as a condition to receiving universal service support, it would sharply reduce the number and diversity of carriers competing for customers in high-cost areas and unnecessarily expand the size of the universal service fund. Neither result would advance the Commission’s and Congress’s interest in ensuring the provision of telecommunications services at affordable rates to all consumers.

I. THE JOINT BOARD SHOULD NOT RECOMMEND EXPANSION OF THE DEFINITION OF UNIVERSAL SERVICE

If the Joint Board and the Commission want to redefine the list of core services eligible for federal universal service support, Section 254(c)(1) of the Communications Act requires that they first determine whether the services “(A) are essential to education, public health, or public safety; (B) have through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity.”^{4/} Measured against these criteria, there is no basis for adding advanced or high-speed services to the list of core services.

First, while access to advanced services may be advantageous to consumers, there is no evidence that they are indispensable in terms of “education, public health, or public safety.”^{5/} Notwithstanding an increased level of residential customer use of the Internet in recent years, the

^{4/} 47 U.S.C. § 254(c)(1)(A)-(D).

^{5/} 47 U.S.C. § 254(c)(1)(A).

Commission's conclusion in 1997 that Internet access beyond voice grade access was not an essential component of the well-being of the nation's education, health, or safety remains valid today.^{6/} Dial-up access still is the primary means for most consumers to reach Internet services and, to the extent they desire higher capacity bandwidth, it is available at many schools and libraries. For purposes of changing the universal service definition under Section 254, "desirable" is not synonymous with "essential."

Second, advanced services are not subscribed to by "a substantial majority of residential customers." At the end of last year, only 7.1 million high-speed lines and 4.3 million advanced service lines were in service.^{7/} Similarly, there were only 5.2 million residential and small business subscribers to high-speed services.^{8/} Penetration rates of less than five percent do not begin to represent a majority of residential customers, much less a "substantial majority."^{9/} Subscribership to advanced wireless service is even lower. Only approximately 39 percent of customers nationwide subscribe to any mobile telephone service,^{10/} and only a small fraction of those subscribe to or use the associated data functions.^{11/} Although wireless carriers such as AWS intend to deploy 3G services across the country in the next several years, today non-voice

^{6/} Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8822-23 (1997) ("1997 Universal Service Order").

^{7/} High-Speed Services for Internet Access: Subscribership as of December 31, 2000, Industry Analysis Division Common Carrier Bureau Federal Communications Commission, 2-3 (Aug. 2001).

^{8/} Id. at 3

^{9/} Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Third Notice of Inquiry, CC Docket No. 98-146, ¶ 12 (rel. Aug. 10, 2001)

^{10/} Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Sixth Report, FCC-01-192, I C. (rel. July 17, 2001) ("Sixth Annual CMRS Competition Report").

^{11/} Id. at I. B. The Commission estimates that by the end of 2000 there were less than 2.5 million mobile data users. Id.

high-speed services are not available to most wireless customers. Section 254(c)(1) plainly requires a demonstration that a telecommunications service has become a part of everyday life before the Commission may add it to the list of supported services. Advanced services – wireless or landline – simply have not reached that level.

Third, rather than promote the public interest, including advanced services on the list of services eligible for support likely would result in higher rates and less choice for consumers. As described more fully below, expanding the definition of universal service would reduce the number of carriers eligible to offer supported services to consumers and thereby limit competition. Broadening the definition also would discriminate against whole classes of providers, including wireless carriers, many of whom do not currently have the technological means to offer advanced services. Such a change also would undermine the goals of Section 254 to ensure that the overall size of the fund is reasonable.^{12/}

Similarly, including the other services mentioned in the Notice (i.e., soft dial tone or warm line, toll, expanded area service, or pre-paid calling plans) on the list of supported services would not advance consumer welfare. Although many carriers provide toll and expanded area services today, they clearly are not essential to the public health, safety, or education. Indeed, based on customer demand, wireless carriers generally are offering calling plans that make no distinction between local and toll calls, and a number of new wireline entrants have established innovative rate plans and broader local calling areas. Requiring carriers essentially to move backward to emulate the incumbent local exchange carriers' ("ILECs") regulatory structure would be both costly and contrary to consumer wishes. In addition, it would raise difficult definitional questions about what constitutes a toll or extended area service for different types of providers. There also is no evidence that expanding the federal universal support program to

^{12/} 47 U.S.C. § 254(c)(1).

include soft dial tone or warm line services would promote the public interest. Support for these services, if it is made available at all, should be provided through state mechanisms. States have greater familiarity with the local demographics and can best determine whether subsidies are needed to ensure the provision of such services to all consumers.

II. INCLUDING ADVANCED SERVICES IN THE LIST OF CORE SERVICES ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT WOULD NOT BE CONSISTENT WITH THE COMMISSION'S GOALS OF COMPETITIVE NEUTRALITY

A determination that advanced services should be included in the definition of universal service would violate the principles of competitive neutrality and prevent many wireless carriers from being designated eligible telecommunications carriers pursuant to section 214(e)(6).^{13/} Section 254(e) of the Act provides that only an eligible telecommunications carrier (“ETC”) designated under section 214(e) shall be eligible to receive federal universal service support.^{14/} Section 214(e), in turn, requires that a common carrier designated as an ETC must offer and advertise all of the services supported by the federal universal service mechanisms.^{15/} Including advanced services in the definition of universal service would not be competitively neutral because incumbent local exchange carriers and their advanced service offerings would be favored over other carriers and their advanced service offerings or lack thereof. Wireless carriers would be particularly disadvantaged because a significant number are not yet capable of providing advanced services.

^{13/} 1997 Universal Service Order, 12 FCC Rcd at 8801 ¶¶ 46-47 (establishing competitive neutrality as an additional requirement for universal service support decisions, and finding that “competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another”).

^{14/} 47 U.S.C. § 254(e).

^{15/} 47 U.S.C. § 214(e).

Wireless carriers are beginning to implement 3G services and many of them should be able to offer high-speed Internet access and data applications on a wide scale in the next several years. Because of technological and spectrum constraints, however, ubiquitous deployment of advanced wireless services is not possible today. ILECs, in contrast, are offering DSL services nationwide. Obtaining ETC status currently presents an opportunity for wireless carriers to compete with ILECs and provide basic services in high cost areas to consumers at competitive rates. Including advanced services in the definition of universal service would foreclose this choice for consumers. It also would have the effect of forcing wireless carriers to compete against subsidized landline offerings of advanced services, imposing an additional barrier to expeditious 3G development. Such a result would fly in the face of the purpose of section 254, which is to encourage the widest availability of telecommunications services. Federal high cost support is to be provided to all ETCs, including wireless carriers, not just ILECs.^{16/} To maintain competitive and technological neutrality, and consistent with congressional objectives, the Joint Board should not recommend including advanced services in the definition of universal service unless and until such a time as most providers offer the services, most residential customers subscribe to them, and advanced services are essential to the public health, safety, and education.

^{16/} See Federal-State Joint Board on Universal Service, Order, 15 FCC Rcd 8746, 8753 ¶ 16. Currently high cost support is provided almost exclusively to ILECs. Id. at ¶ 17.

CONCLUSION

For the foregoing reasons, the Commission should not expand the definition of universal service at this time.

Respectfully submitted,

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